

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In re Applications of	)	MB Docket No. 17-85
)	
JOSEPH M. FIELD	)	Lead File No.
	)	BTCH-20170320AHE
and)	
)	
SHAREHOLDERS OF ENTERCOM)	
COMMUNICATIONS CORPORATION)	
)	
For Transfer of Control of)	
Entercom License, LLC)	
)	
KUDL(FM), Sacramento, CA)	
Facility ID #57889	)	File No. BTCH-20170320AJT
KKDO(FM), Fair Oaks, CA)	
Facility ID #6810	)	File No. BTCH-20170320AJS
KSEG(FM), Sacramento, CA)	
Facility ID #11281	)	File No. BTCH-20170320AJQ
KRXQ(FM), Sacramento, CA)	
Facility ID #20354	)	File No. BTCH-20170320AKU
KIFM(AM), West Sacramento, CA)	
Facility ID #67848	)	File No. BTC-20170320AJR
)	
KOIT(FM), San Francisco, CA)	
Facility ID #6380	)	File No. BTCH-20170320AJU
KOIT-FM3, Martinez, CA)	
Facility ID #6374	)	File No. BTCFTB-20170320AJX
KGMZ(FM), San Francisco, CA)	
Facility ID #25446	)	File No. BTCH-20170320AJV
KGMZ-FM1, Walnut Creek, CA)	
Facility ID #25447	)	File No. BTCFTB-20170320AJY
KRBQ(FM), San Francisco, CA)	
Facility ID #65486	)	File No. BTCH-20170320AKV
KRBQ-FM2, San Francisco, CA)	
Facility ID #137626	)	File No. BTCFTB-20170320AJW
KUFX(FM), San Jose, CA)	
Facility ID #65415	)	File No. BTCH-20170320AKW
KUFX-FM2, Morgan Hill, CA)	
Facility ID #65413	)	File No. BTCFTB-20170320AKX
KUFX-FM3, Pleasanton, CA)	
Facility ID #136624	)	File No. BTCFTB-20170320AKY
KBLX-FM, Berkeley, CA)	
Facility ID #28670)	File No. BTCH-20170320AKZ

KBLX-FM2, Pleasanton, CA)	
Facility ID #88317)	File No. BTCFTB-20170320ALA
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ENTERCOM LICENSE, LLC)	
)	Lead File No.
and)	BALH-20170320ALJ
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THE ENTERCOM DIVESTITURE TRUST)	
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For Assignment of License of:)	
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KUDL(FM), Sacramento, CA)	
Facility ID #57889)	
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Facility ID #6810)	
KSEG(FM), Sacramento, CA)	File No. BALH-20170320ALW
Facility ID #11281)	
KRXQ(FM), Sacramento, CA	)	File No. BALH-20170320ALX
Facility ID #20354)	
KIFM(AM), West Sacramento, CA	)	File No. BALH-20170320ALT
Facility ID #67848)	
	)	File No. BAL-20170320AMD
KOIT(FM), San Francisco, CA)	
Facility ID #6380)	
KOIT-FM3, Martinez, CA)	File No. BALH-20170320AMA
Facility ID #6374)	
KGMZ(FM), San Francisco, CA)	File No. BALFTB-20170320AMF
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KGMZ-FM1, Walnut Creek, CA)	File No. BALH-20170320ALZ
Facility ID #25447)	
KRBQ(FM), San Francisco, CA)	File No. BALFTB-20170320AMJ
Facility ID #65486)	
KRBQ-FM2, San Francisco, CA	)	File No. BALH-20170320ALK
Facility ID #137626)	
KUFX(FM), San Jose, CA	)	File No. BALFTB-20170320ALL
Facility ID #65415)	
KUFX-FM2, Morgan Hill, CA	)	File No. BALH-20170320ALN
Facility ID #65413)	
KUFX-FM3, Pleasanton, CA	)	File No. BALFTB-20170320ALO
Facility ID #136624)	
KBLX-FM, Berkeley, CA	)	File No. BALFTB-20170320ALP
Facility ID #28670)	
KBLX-FM2, Pleasanton, CA	)	File No. BALH-20170320ALM
Facility ID #88317)	
	)	File No. BALFTB-20170320DDD
CBS BROADCASTING, INC.)	
)	

and	)	Lead File No.
)	BTC-20170320ACV
SHAREHOLDERS OF ENTERCOM)	
COMMUNICATIONS CORPORATION)	
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CBS Radio Stations, Inc.)	
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KHTK(AM), Sacramento, CA)	
Facility ID #20352)	
KYMX(FM), Sacramento, CA)	File No. BTC-20170320ACW
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Facility ID #20353)	
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KFRC-FM, San Francisco, CA)	
Facility ID #20897)	
KFRC-FM1, Pleasanton, CA)	File No. BTCH-20170320ADH
Facility ID #178412)	
	)	File No. BTCFTB-20170320AEU
KEZN(FM), Palm Desert, CA)	
Facility ID #11747)	
	)	File No. BTCH-20170320ADG
KXNT(AM), North Las Vegas, NV)	
Facility ID #33068)	
KXST(AM), North Las Vegas, NV	)	File No. BTC-20170320ACY
Facility ID #47745)	
KLUC-FM, Las Vegas, NV	)	File No. BTC-20170320ACZ
Facility ID #47744)	
KMXB(FM), Henderson, NV	)	File No. BTCH-20170320ADM
Facility ID #51676)	
KXQQ-FM, Henderson, NV	)	File No. BTCH-20170320ADP
Facility ID #12560)	
KXTE(FM), Pahrump, NV)	File No. BTCH-20170320ADU
Facility ID #2100)	
)	File No. BTCH-20170320ADV
CBS RADIO STATIONS, INC.)	
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and)	Lead File No.
)	BALH-20170320ANE
THE ENTERCOM DIVESTITURE TRUST)	
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Facility ID #20352)	

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CBS Radio of Sacramento, Inc.)	
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KSFM(FM), Woodland, CA)	
Facility ID #59598)	
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CBS RADIO OF SACRAMENTO, INC.)	
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COMMUNICATIONS CORPORATION)	BTC-20170320AAZ
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CBS Radio East, Inc.)	
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KCBS(AM), San Francisco, CA)	
Facility ID #9637)	

KZDG(AM), San Francisco, CA)	
Facility ID #25458)	
KITS(FM), San Francisco, CA)	
Facility ID #18510)	File No. BTC-20170320AAZ
KITS-FM1, Walnut Creek, CA)	
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KITS-FM2, Pleasanton, CA)	File No. BTCH-20170320ABQ
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KITS-FM4, Antioch, CA)	File No. BTCFTB-20170320ACI
Facility ID #18526)	
KLLC(FM), San Francisco, CA)	
Facility ID #9624)	File No. BTCFTB-20170320ACJ
KLLC-FM2, Pleasanton, CA)	
Facility ID #178408)	File No. BTCFTB-20170320ACK
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CBS RADIO EAST, INC.)	File No. BTCH-20170320ABR
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and)	File No. BTCFTB-20170320ACL
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COMMUNICATIONS CORPORATION)	

SUMMARY

The Entercom/CBS applications involving the Sacramento and San Francisco radio markets violate Section 73.3555(a)(1)(i) as they would place 10 Sacramento market and 11 San Francisco market primary radio stations in the hands of Elliot Evers as trustee of the Entercom Divestiture Trust. This violates the FCC's multiple ownership rules, and requires a finding by the FCC that the above-captioned Sacramento and San Francisco market station applications were inadvertently accepted for filing; they must now be dismissed pursuant to Section 73.3566(a) of the Commission's Rules.

Furthermore, Edward R. Stolz, II, the former and hopefully future owner of KUDL(FM), 106.5 MHz, Sacramento, California (formerly KWOD), who is in the United States Court of Appeals for the District of Columbia Circuit in Case No. 16-1248, Stolz v. FCC, requests the Commission to transfer the hearing issues specified in Docket 16-357 into a new license renewal hearing proceeding involving Entercom's remaining five Sacramento market cluster stations. Furthermore, Stolz urges the Commission to adopt all hearing issues proposed by the Intervenors in Docket 16-357 in a "Petition to Enlarge Issues" filed by them on January 9, 2017. This pleading was not acted upon by the Chief

Administrative Law Judge as Entercom voluntarily dismissed its renewal applications for KDND(FM), Sacramento, California.

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SHAREHOLDERS OF ENTERCOM)	
COMMUNICATIONS CORPORATION)	
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For Transfer of Control of)	
CBS Radio KMQV-FM Inc.)	
)	
KMQV-FM, San Francisco, CA)	File No. BTCH-20170320AFV
Facility ID #1084)	
KMQV-FM3, Walnut Creek, CA)	File No. BTCFTB-20170320AFW
Facility ID #1090)	
)	

CBS RADIO WMVQ-FM INC.)	
)	
and)	
)	
THE ENTERCOM DIVESTITURE TRUST)	
)	
For Assignment of License of:)	
)	
KMVQ-FM, San Francisco, CA)	
Facility ID #1084	)	File No. BALH-20170320AMP
KMVQ-FM3, Walnut Creek, CA)	
Facility ID #1090	)	File No. BALFTB-20170320AMQ
)	

TO: Office of the Secretary

ATTN: Chief, Media Bureau

PETITION TO DISMISS OR DENY

Edward R. Stolz II d/b/a Royce International Broadcasting Company (Stolz), Golden State Broadcasting, LLC (Golden), Silver State Broadcasting, LLC (Silver) and Major Market Radio, LLC (Major) (collectively "Petitioners"), by their attorney, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, and Section 73.3584 of the Commission's Rules, hereby respectfully submit this Petition to Dismiss or Deny the applications captioned above. In support whereof, the following is shown:

Timeliness

1. The Commission's Public Notice of March 31, 2017, DA 17-299, set May 1, 2017 as the deadline for pleadings such as

this in MB Docket No. 17-85. Therefore, this pleading is timely filed.

Standing

2. Stolz was the licensee of FM Broadcast Station KUDL (formerly known as KWOD), Sacramento, California; he has contested the FCC Form 314 application which was filed against his will, File No. BALH-20021120ACE, and is now in the United States Court of Appeals for the District of Columbia Circuit, Stolz v. FCC, Case No. 16-1248, which has been brief and awaiting a date to be set for oral argument. Stolz has requested that the appellate court reverse the FCC decision, which would result in the dismissal of BALH-20021120ACE and the return of the KUDL license to him which such action would necessitate. Stolz would suffer a concrete economic injury by the grant of the above-captioned applications as they pertain to KUDL, and therefore is a party in interest as to the Commission's disposition of Entercom/CBS stations in the Sacramento radio market.

3. The applications in Docket 17-85 involve a number of primary broadcast stations and FM booster stations in the San Francisco radio market. Golden is licensee of FM Broadcast Station KREV, Alameda, California, which operates in the Nielsen defined San Francisco radio metro market. KREV competes for listeners and revenues with the Entercom and CBS stations in the San Francisco market. Therefore, Golden has competitor standing to challenge the grantability of the San Francisco market

stations captioned above. ***FCC v. Sanders Brothers Radio Station***, 309 U.S. 470 (1940).

4. The applications in Docket 17-85 involve a cluster of six primary broadcast stations in the Las Vegas radio market. Silver is licensee of AM Broadcast Station KBET, Winchester, Nevada, and FM Broadcast Station KFRH, North Las Vegas, Nevada, which both of which operate in the Nielsen defined Las Vegas radio metro market. KBET and KFRH compete for listeners and revenues with the stations currently owned by CBS in the Las Vegas market. Therefore, Golden has competitor standing to challenge the grantability of the Las Vegas market stations captioned above. ***FCC v. Sanders Brothers Radio Station***, 309 U.S. 470 (1940).

5. Docket 17-85 involves the CBS owned KEZN(FM), Palm Desert, California, which operates in the Nielsen defined Palm Springs market. Major is licensee of FM Broadcast Station KRCK-FM, Mecca, California, which operates in the Nielsen defined Palm Springs radio metro market. KRCK-FM competes for listeners and revenues with KEZN in the Palm Springs market. Therefore, Major has competitor standing to challenge the grantability of the KEZN application captioned above. ***FCC v. Sanders Brothers Radio Station***, 309 U.S. 470 (1940).

The Sacramento Applications Are Collectively Defective

6. In making this argument, we are relying on the FCC's CDBS database viewable by the public as of the date hereof. It

does not appear that Entercom, CBS and Elliot Evers, the trustee of the Entercom Divestiture Trust (EDT), have amended their application. At present, the parties to the above-captioned application propose that Evers, as trustee of the EDT, control a total of ten (10) stations in the Sacramento market, eight of which are FM stations:

- KUDL(FM), Sacramento, CA, FIN 57889
- KRXQ(FM), Sacramento, CA, FIN 20354
- KSEG(FM), Sacramento, CA, FIN 11281
- KYMX(FM), Sacramento, CA, FIN 72116
- KZZO(FM), Sacramento, CA, FIN 65481
- KNCI(FM), Sacramento, CA, FIN 20353
- KKDO(FM), Fair Oaks, CA, FIN 6810
- KSFM(FM), Woodland, CA, FIN 59598
- KHTK(AM), Sacramento, CA, FIN 67848
- KIFM(AM), West Sacramento, CA, FIN 20352

7. Of course, this is a patent violation of Section 73.3555(a)(1)(i), which limits common ownership of stations in a market such as Sacramento to eight (8) stations, no more than five (5) in any one service.

8. The Commission's public notice in this matter, DA 17-299, acknowledged that Entercom, CBS, Evers and the EDT were in violation of Section 73.3555(a)(1)(i), and stated the following (footnotes omitted):

We note that several of the Divestiture Trust Applications⁴ propose to assign to EDT more stations than Entercom actually plans to divest, and, in fact, more stations than EDT can lawfully own under Section 73.3555(a)(1) of the Rules. To the extent that Entercom and CBS otherwise are unable to come into compliance with local radio ownership limits prior to the consummation of the proposed transactions, they will amend those applications to specify the particular stations to be assigned to EDT in accordance with such limits.⁵ The Commission, based on the record developed and its review of the amendments, may establish an additional comment period when the amendments are accepted.⁶

9. Precedent requires that, pursuant to Section 73.3566(a), the FCC must summarily dismiss all above-captioned applications pertaining to the Sacramento radio market as each one was inadvertently accepted for filing. **Richard A. Helmick, Esq. (Tri-Cities/Yakima Divestiture Trust)**, 26 FCC Rcd 10715 (Media Bureau, 2011). The logic of the Media Bureau in facilities application proceedings, that an applicant must be ready to implement its proposal at the time the application is filed, must also equally apply here. See e.g. **FM Table of Allotments, Stonewall, Mississippi**, 11 FCC Rcd 3593 (Bureau, 1996), citing **FM Table of Allotments, Broken Arrow, Oklahoma**, 3 FCC Rcd 6307 (Bureau, 1988), recon. den. 4 FCC Rcd 6981 (Bureau, 1989). The above-captioned parties are not ready to implement a proposal which complies with the FCC's multiple ownership rules, and their applications must be dismissed as inadvertently accepted for filing.

10. However, should the Commission allow the above-captioned applicants remain on file and to amend, the Commission would be required by 47 U.S.C. §309(b) to specify a new period of

no less than thirty days for the public to file petitions. 47
U.S.C. §309(b).

The San Francisco Applications Are Collectively Defective

11. Likewise, the FCC should summarily dismiss all above-captioned applications which would result in Elliot Evers and the EDT controlling eleven (11) stations in the San Francisco radio metro market, nine (9) of which being FM stations, in gross violation of Section 73.3555(a)(1)(i):

- KBLX-FM, Berkeley, California, FIN 28670
- KFRC-FM, San Francisco, CA, FIN 20897
- KGMZ(FM), San Francisco, CA, FIN 25446
- KITS(FM), San Francisco, CA, FIN 18510
- KLLC(FM), San Francisco, CA, FIN 9624
- KMQV-FM, San Francisco, CA, FIN 1084
- KOIT(FM), San Francisco, CA, FIN 6380
- KRBQ(FM), San Francisco, CA, FIN 65486
- KUFY(FM), San Jose, CA, FIN 65415
- KCBS(AM), San Francisco, CA, FIN 9637
- KZDG(AM), San Francisco, CA, FIN 25458

12. For the legal reasons stated in paragraph 9 above, the above applications, as they stand collectively, are patently defective and must be dismissed pursuant to Section 73.3566(a). In the alternative, should the applicants captioned above tender an amendment, the FCC must publish a new public notice and provide parties such as Petitioners a new 30 day period for petitions and comments pursuant to Section 309(b) of the Communications Act as amended.

Unresolved Issues Against Entercom's Sacramento Cluster

13. *Status of KDND.* As of May 1, 2017, it is still unclear what the status of KDND is. ALJ Sippel terminated the above-captioned proceeding (FCC 17M-09, released March 16, 2017, see Exhibit A), yet the FCC's CDBS system as of the undersigned's checking today shows that KDND is still an active license. It seems to us therefore that the Order, FCC 17M-09, was defective as it failed to order the dismissal of all pending KDND applications, the consequent termination and cancellation of the KDND license and the deletion of the KDND facilities. This clearly needs to be dealt with by someone at the FCC.

14. *Status of Hearing Issues against Entercom.* The Commission in the past has not let a party in the posture of Entercom get away with "settling away" designated hearing issues in one case in hopes of avoiding them with respect to the party's other broadcast stations. ***Western Cities Broadcasting, Inc.***, DA 90-1355, 5 FCC Rcd 6177 (Audio Services Division, 1990).

15. ***Western Cities*** involved an experienced broadcaster named Richard "Rick" Phalen. Phalen had been determined in an Initial Decision rendered by ALJ Walter Miller to be the undisclosed real party in interest in his daughter's application for a new FM construction permit at Montecito, California (MM Docket No. 87-426). ***Shawn Phalen***, 4 FCC Rcd 5714 (ALJ, 1989). The Montecito case was settled, but ALJ Miller recommended that the real party in interest issues be tried against Phalen whenever his next renewal of license application was to be ruled

upon. That turned out to be KQKS(FM) in Longmont, Colorado. The Audio Services Division designated the KQKS(FM) application upon appropriate issues.

16. Entercom must not be allowed to walk away from the serious unresolved hearing issues in the above-captioned docket, particularly in light of its proposed merger with CBS Radio. There remain material unresolved issues which impact whether Entercom possesses the basic qualifications to be a Commission licensee.

17. In the 1986 *Policy on Comparative Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, at footnote 60, the Commission wrote:

The Commission acknowledges that there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation. See e.g., supra, comments of ABC at note 29. Such misconduct might, of its own nature, constitute prima facie evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body. The Commission cannot presently contemplate the manner in which circumstances might arise, and stresses that such considerations would come into play only with regard to a specific application involving specific misconduct.

18. The death of Jennifer Lea Strange was an event that shocked the conscience. We note that Vice-President Pence has proclaimed at the March for Life in Washington, DC on January 27, 2017 that the Trump administration "will not rest until we

restore a culture of life in America"¹. Therefore, the Commission cannot permit the hearing issues in the above-captioned docket be swept under the rug.

19. Stolz associates himself with the arguments made by the KDND Intervenors in their January 9, 2017 "Petition to Enlarge Issues", and incorporates herein by reference said Petition² (Exhibit B). In particular, the KDND Intervenors argued, and Stolz urges, the following with respect the argument that the hearing issues should apply at least to all stations in Entercom's Sacramento cluster [footnotes omitted] (Petition to Enlarge at 6-7):

Local stations are grouped in clusters to be co-managed by a single hand, typically a vice president, charged with consolidating operations, eliminating duplication and, so far as possible, maximizing revenue and minimizing costs. Compensation of staff is closely tied to market performance, whether market rank or quarterly ratings. Entercom Sacramento was such a station cluster, which also happened at the time to be within the administration of a common subsidiary, Entercom Sacramento, LLC. It share a common office facility, indeed even shared the lunch room where the notorious contest was staged.

Petitioner submit that within this cluster, through a combination of inattention and cost pressure, two core licensee duties completely atrophied to the point of non-existence: (1) the duty to assure licensee compliance with FCC rules and policies; and (2) the duty of the licensee to maintain oversight and control. While the homicide by negligence of Ms. Strange is indeed a singular event demanding close attention, the licensee failure was much broader:

It was entirely foreseeable that uninformed employees would be likely to violate policies - it was only a question of time until it happened. The only matter that could not have been foreseen was the precise form the misconduct would take.

¹<https://www.theatlantic.com/politics/archive/2017/01/trump-pledges-allegiance-to-pro-life-america/514745/>

²<https://ecfsapi.fcc.gov/file/1011381428049/17011103-4.pdf>

Walton Broadcasting Inc. (KJKK), Tucson, Arizona, 78 FCC 2d 857 (1980), at 869.

The HOO presents a devastating overview of the policy awareness vacuum and absence of oversight within the Sacramento cluster. The cluster essentially was on its own in matters of FCC compliance, because Carmela Masi, the corporate official in Pennsylvania assigned to this task by penny-pinching management, had a crushing work load (HOO fn. 239). Unable to respond to the particulars of individual inquiries, she generally told station personnel to use their best judgment (HOO para. 71).

20. Stolz incorporates by reference the KDND Intervenors' analysis of 47 U.S.C. §309(k) as rejecting a narrow reading of the statute to confine a hearing to one station, but to accept the House of Representatives' language (Petition to Enlarge at 8):

Subsection (k) allows for Commission consideration of the incumbent broadcast licensee without the contemporaneous consideration of competing applications [the with respect to that station restriction]. Under this subsection, the the Commission would grant a renewal application if it finds that the station, during its term, had served the public interest, convenience and necessity; there had been no serious violations by the licensee [emphasis added] of the Communications Act or Commission rules, and there had been no other violations of the Communications Act or Commission rules which, taken together, indicate a pattern of abuse.

21. The KDND Intervenors argued, and Stolz agrees with them, that, "In short, Congress preferred and adopted the version that recognized valid and broad inquiry into licensee violations and into station or licensee pattenls of abuse. The record set forth in the HDO amply shows both serious violations, resulting in a negligence verdict against the Sacramento group

collectively, and a group-wide outage of oversight and control. Accordingly issues are needed to determine whether or not the pending renewal applications should be granted for KUDL (FM), Facility ID 65889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID 11281."

22. Two days before the end of the Obama administration, the Media Bureau by unreported letter ruling granted these five renewals, when they should have waited for the outcome of the above-captioned matter involving KDND. Stolz timely filed a Petition for Reconsideration of this flawed letter ruling, which is pending as of today.

23. Therefore, since in light of the unresolved hearing issues in Docket 16-357 neither the Commission nor its staff acting pursuant to delegated authority can make the statutory finding that the applicant for renewal of licenses of the five stations listed in paragraph 18 above will serve the public interest, convenience and necessity, it is imperative that the Commission (or the Chief, Audio Division, Media Bureau) vacate the January 18, 2017 letter ruling of the Chief, Media Bureau, return all five stations listed in paragraph 4 above to pending status, and then designate all of their renewal applications for hearing, either in Docket 16-357 or in another docket, and try all of the hearing issues designated against Entercom relative to its operation of KDND to determine whether Entercom has the basic

statutory qualifications to be licensee of any of its remaining Sacramento, California market radio cluster stations.

24. Stolz would then renew his request to be granted intervenor status in such hearing. Stolz has a concrete Article III economic interest in the outcome of the above-captioned proceedings, since if Entercom is found to be legally qualified to be a Commission licensee of its Sacramento cluster, Stolz would suffer financial injury. As the Supreme Court wrote in ***FCC v. Sanders Brothers Radio Station***, 309 U.S. 470, 477:

Congress had some purpose in enacting § 402(b)(2). It may have been of opinion that one likely to be financially injured by the issue of a license would be the only person having a sufficient interest to bring to the attention of the appellate court errors of law in the action of the Commission in granting the license. It is within the power of Congress to confer such standing to prosecute an appeal [footnote nine].³

We hold, therefore, that the respondent had the requisite standing to appeal and to raise, in the court below, any relevant question of law in respect of the order of the Commission.

25. Stolz has an economic interest in the outcome of the proceedings against the Entercom Sacramento cluster, since they impact upon his attempts to recover his license for KUDL (formerly KWOD), 106.5 MHz, Sacramento, California, which is in the United States Court of Appeals for the District of Columbia Circuit in *Stolz v. FCC*, Case No. 16-1248, the Commission lacks the discretion to deny Stolz party in interest status in the above-

³The text of footnote 9 is: Compare *Interstate Commerce Commission v. Oregon-Washington R. Co.*, 288 U. S. 14, 288 U. S. 23-25.

captioned docket. In ***Elm City Broadcasting Corporation v. FCC***, 235 F.2d 811, 819 (D. C. Cir. 1956), the appellate court wrote:

We think it clear that the only legislative purpose in requiring petitioners for intervention to show 'the basis for their interest' is to enable the Commission to determine whether the petitioners' allegations show them to be 'parties in interest.' When that is done, the Commission has exhausted its discretion; it may not deny intervention to a party in interest merely because it thinks his participation would not aid its decisional process.

26. Therefore, the FCC must grant reconsideration of ¶23 of the HDO and grant Stolz status as a party and interest and accord him intervenor status in MB Docket No. 16-357.

27. *Petition to Enlarge Issues*. ALJ Sippel did not rule on the January 9, 2017 Petition to Enlarge Issues. Had Entercom not embarked on its gambit to turn in the KDND license for cancellation, in our view ALJ Sippel would have had no choice to grant the petition. Intervenors had raised the "good deal of smoke" emanating from Entercom's Sacramento cluster indicating its lack of basic qualifications to be a Commission licensee. ***Citizens for Jazz on WRVR, Inc. v. FCC***, 857 F.2d 1556 (D. C. Cir. 1988).

28. Therefore, in a hearing which involves stations KUDL, KRXQ, KSEG, KKDO and KIFM, in addition to restoring all hearing issues stated in the KDND Hearing Designation Order, the Commission must also designate the following issues:

- To determine whether Entercom Sacramento, a subsidiary of Entercom, failed to properly train and exercise appropriate supervision of staff with respect to FCC compliance matters

at stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);

- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License, LLC operated Stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM) in the public interest during the most recent license term;
- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom's applications for renewal of licenses should be granted, as follows:
KUDL(FM) File No. BRH-20130730ANC
KIFM(AM) File No. BRH-20130730ANG
KKDO(FM) File No. BRH-20130730AND
KRXQ(FM) File No. BRH-20130730ANI
KSEG(FM) File No. BRH-20130730ANK
- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License LLC possesses the necessary character attributes of reliability and legal compliance to be a Commission licensee of Stations KDND (FM), KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);
- To determine whether Entercom License LLC violated Section 73.3588 of the Rules, by failing to report to existence or terms of a settlement agreement, whereby judgment creditors in the case of William A. Strange et al. v. Entercom Sacramento LLC et al. agreed to dismiss their FCC filing pending against the defendants

29. *Actual Punitive Effect Upon Entercom.* As it turns out, the shareholders of Entercom are parties to an application to acquire five stations in the Sacramento radio market from CBS Radio, and then spin all of them off into the "Entercom Divestiture Trust". The stations are: KHTZ(AM), Sacramento, CA, FIN 20352; KZZO(AM), Sacramento, CA, FIN 65481; KNCI(FM),

Sacramento, CA, FIN 20353; KYMX(FM), Sacramento, CA, FIN 72116; and KSFM(FM), Woodland, CA 59598.

30. Entercom may have turned in the KDND license for cancellation, but what penalty exactly did it suffer, as under the FCC's multiple ownership rules it could not own more than 5 FM and 3 AM stations in one market. They would have had to spin off two stations. Furthermore, Entercom may have found that would gain a tax advantage, such as a substantial write-off, by turning in the KDND license.

31. For public interest reasons, Entercom should explain how it was penalized by having to turn the KDND license in, to avoid the serious issues that shock the conscience that were designated against it. It looks to the undersigned that Entercom may have set up a shell game to confuse the Commission and get it to sweep these material and serious issues under the rug.

Conclusion

32. As noted above, the Entercom/CBS applications involving the Sacramento and San Francisco radio markets violate Section 73.3555(a)(1)(i) as they would place 10 Sacramento market and 11 San Francisco market primary radio stations in the hands of Elliot Evers as trustee of the Entercom Divestiture Trust. This violates the FCC's multiple ownership rules, and requires a finding by the FCC that the above-captioned Sacramento and San Francisco market station applications were inadvertently accepted

for filing; they must now be dismissed pursuant to Section 73.3566(a) of the Commission's Rules.

33. Furthermore, there still remains substantial and material questions of fact and law whether Entercom possesses the basic qualifications to be a Commission licensee. In light of the termination of Docket 16-357, the Commission now has an obligation to transfer all hearing issues previously designated by the Commission on October 27, 2016 in FCC 16-153 to a new hearing proceeding involving the most recent renewal applications for the following stations: KUDL(FM), Sacramento, California, File No. BRH-20130730ANC; KRXQ(FM), Sacramento, California, File No. BRH-20130730ANI; KSEG(FM), Sacramento, California, File No. BRH-20130730ANK; KKDO(FM), Fair Oaks, California, File No. BRH-20130730AND; and KIFM(AM), West Sacramento, California, File No. BRH-20130730ANG. The Commission needs to grant the Stolz "Petition for Reconsideration" of February 17, 2017, vacate their license renewal grants and designate each of the renewal applications for these stations for hearing on the issues designated in Docket 16-357, because they were commonly managed in Entercom's Sacramento market radio cluster. Furthermore, the Commission needs to adopt all hearing issues proposed by the Intervenors in the KDND proceeding on January 9, 2017.

34. A Declaration of Edward R. Stolz II supporting this pleading is attached hereto as Exhibit C.

WHEREFORE, Petitioners urges that the Commission dismiss all above-captioned applications as, collectively, they violate Section 73.3555(a)(1)(i), and consequently must be dismissed as inadvertently accepted for filing pursuant to Section 73.3566(a) of the Commission's Rules; or, in the alternative Petitioners urge that the Commission designate for hearing all applications related to Entercom/CBS's cluster in the Sacramento, California upon the hearing issues specified by the Commission in its October 27, 2016 Hearing Designation Order relative to Entercom's KDND(FM), Sacramento, California, FCC 16-153, at ¶83, 31 FCC Rcd at 12229-12230, to wit:

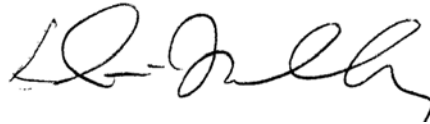
- (a) To determine whether Entercom designed and conducted a contest that was inherently dangerous;
- (b) To determine whether Entercom increased the danger to the contestants in the "Hold Your Wee for a Wii" contest by changing the contest terms;
- (c) To determine whether Entercom was aware of the potential dangers of the "Hold Your Wee for a Wii" contest and water intoxication;
- (d) To determine whether Entercom failed to protect the contestants of the "Hold Your Wee for a Wii" contest from its potential dangers;
- (e) To determine whether Entercom failed to warn the contestants of the "Hold Your Wee for a Wii" contest of the contest's potential dangers;
- (f) To determine whether Entercom prioritized entertainment value over the welfare of contestants of the "Hold Your Wee for a Wii" contest;
- (g) To determine whether Entercom failed to properly train and exercise appropriate supervision of Station KDND(FM) staff and the "Hold Your Wee for a Wii" contest to ensure the safety of the contestants;
- (h) To determine, in light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License, LLC operated Station KDND(FM) in the public interest during the most recent license term; and
- (i) To determine, in light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom's Applications for Renewal of License for KDND(FM), File Nos. BRH-20130730ANM and BRH-20050728AUU, should be granted.

and, **WHEREFORE**, Petitioners also urge the Commission to designate for hearing the following issues which were proposed by the KDND Intervenors in their "Petition to Enlarge Issues" filed with the FCC on January 9, 2017:

- To determine whether Entercom Sacramento, a subsidiary of Entercom, failed to properly train and exercise appropriate supervision of staff with respect to FCC compliance matters at stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);
- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License, LLC operated Stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM) in the public interest during the most recent license term;
- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom's applications for renewal of licenses should be granted, as follows:
KUDL(FM) File No. BRH-20130730ANC
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KSEG(FM) File No. BRH-20130730ANK
- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License LLC possesses the necessary character attributes of reliability and legal compliance to be a Commission licensee of Stations KDND (FM), KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);
- To determine whether Entercom License LLC violated Section 73.3588 of the Rules, by failing to report to existence or terms of a settlement agreement, whereby judgment creditors in the case of William A. Strange et al. v. Entercom Sacramento LLC et al. agreed to dismiss their FCC filing pending against the defendants.

Respectfully submitted,

**EDWARD R. STOLZ II, d/b/a ROYCE
INTERNATIONAL BROADCASTING COMPANY
GOLDEN STATE BROADCASTING, LLC
SILVER STATE BROADCASTING, LLC
MAJOR MARKET RADIO, LLC**

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

By _____
Dennis J. Kelly
Their Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
Telephone: 202-293-2300
E-mail: dkellyfcclaw1@comcast.net

DATED: May 1, 2017

EXHIBIT A

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 17M-09

In the Matter of	)	MB Docket No. 16-357
)	
Entercom License, LLC	)	Facility ID No. 65483
Applications for Renewal of License for Station)	
KDND(FM), Sacramento, California	)	File Nos. BRH-20050728AUU and
	)	BRH-20130730ANM
)	

ORDER

Issued: March 16, 2017

Released: March 16, 2017

On October 27, 2016, the Media Bureau released *In the Matter of Entercom License, LLC Application for Renewal of License for Station KDND(FM), Sacramento, California*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 Fcc Rcd 12186 (*HDO*), in the above-captioned renewal proceeding. The *HDO* alleged that Station KDND(FM), a radio station operated by Entercom License, LLC (Entercom) in Sacramento, California, held a water-drinking contest called “Hold Your Wee for a Wii” on January 12, 2007. Following the contest, contestant Jennifer Lea Strange died from water intoxication (hyponatremia). It was determined by a court that her death was a result of the station’s negligence.

The *HDO* designated for hearing various legal and factual issues related to the contest, including whether Entercom knew that the contest was dangerous and failed to warn the contestants; whether Entercom operated Station KDND(FM) in the public interest; and whether Entercom’s license for Station KDND(FM) should be renewed. 31 FCC Rcd at 12229-30, para. 83.

On January 9, 2017, intervenor Sue Wilson and the Media Action Center (collectively, MAC) filed a Petition to Enlarge Issues (Petition). On January 18, 2017, the Enforcement Bureau filed an Opposition to the Petition. On January 19, 2017, Entercom filed its own Opposition to the Petition. MAC filed a Reply to the Enforcement Bureau on January 26, 2017, and a Reply to Entercom on January 27, 2017. On February 1, 2017, the Enforcement Bureau filed a Motion for Leave to File a Surreply, along with the proposed Surreply.

Prior to any ruling on the Petition, Entercom filed a Notice of Discontinuance with the Media Bureau on February 3, 2017, notifying the Media Bureau that it would “permanently discontinue operation of KDND(FM) . . . on February 8, 2017.” On February 8, 2017, Entercom

“forward[ed] the station license for KDND(FM) . . . and other KDND instruments of authorization to the Commission for cancellation”

The same day, February 8, 2017, Entercom filed a Motion to Dismiss Renewal Applications and Terminate Hearing.¹ On February 10, 2017, MAC filed an Opposition to Entercom’s Motion to Dismiss, as well as a request to hold a settlement conference.

Thereafter, on February 22, 2017, Entercom and MAC filed a Joint Motion for Approval of Settlement, to which the Enforcement Bureau had no objection. The settlement agreement only compensates MAC for its legal fees and nothing else, and the fees appear to be reasonable.

Rulings

Entercom has avoided the Commission hearing process by surrendering its license for KDND(FM). Entercom has also reached a settlement agreement with MAC. Therefore, there is nothing further to be done here beyond dismissal. The ultimate question in the *HDO* was whether Entercom’s license for KDND(FM) should be renewed, and that has now been rendered moot by Entercom surrendering its license. Finally, Entercom has willingly accepted the severest penalty of a renewal case by surrendering forever its license to operate KDND(FM), Sacramento, California.

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¹ The Prehearing Conference set for February 8, 2017 was cancelled via email upon receipt of Entercom’s Motion to Dismiss. *See Order*, FCC 17M-02 (rel. Feb. 6, 2017).

Accordingly, **IT IS ORDERED** that:

1. MAC's Petition to Enlarge and the Bureau's Motion for Leave to File a Surreply **ARE DISMISSED** as moot.
2. Entercom and MAC's Joint Motion for Approval of Settlement **IS GRANTED**; and
3. Entercom's Motion to Dismiss **IS GRANTED**, and this proceeding **IS TERMINATED**, with prejudice.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION²

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Richard L. Sippel
Chief Administrative Law Judge

² Courtesy copies of this Order will be sent via email to all counsel of record on the date of issuance.

EXHIBIT B

ORIGINAL

Received & Inspected

JAN - 9 2017

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC Mailroom

In the Matter of

Entercom License, LLC

Applications for Renewal of License for Station

KDND(FM), Sacramento, California

)

) MB Docket No. 16-357

) Facility ID No. 65483

) File Nos. BRH-20050728AUU

) and BRH-20130730ANM

PETITION TO ENLARGE ISSUES
BY
MEDIA ACTION CENTER AND SUE WILSON

* * * * *

DOCKET FILE COPY ORIGINAL

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January 9, 2017.

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SUMMARY OF THE ARGUMENT

Because stations in Entercom Sacramento operated under the same management, practices, and resource constraints, there is no reason to exclude the other stations in the cluster from the renewal issues already designated for hearing – stations KUDL (FM) , Facility ID 65889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID 11281. All these stations have renewal application accepted for filing but not granted. Issues are needed to determine whether or not they have served the public interest during the renewal term, so as to be granted renewal.

Our second point of enlargement centers on the failure of HDO to put forth an issue of character qualification based on the facts already adduced.

The third area of requested enlargement was a reporting violation. By not reporting the terms of the settlement agreement of the lawsuit with plaintiffs, which included agreement to withdraw the decedent's family's complaint at the FCC, Entercom Sacramento failed to report, in violation of Sec. 73.3588 of the Rules.

C O N T E N T S

A. SUMMARY OF THE ARGUMENT

B. NEGLIGENCE, INATTENTION AND LACK OF OVERSIGHT WERE PERVASIVE ACROSS THE FULL SACRAMENTO CLUSTER [3]

C. BASED ON THIS RECORD, THE COMMISSION HAS AUTHORITY UNDER SECTION 309(K) TO DESIGNATE RENEWALS OF ALL THE SACRAMENTO CLUSTER STATIONS FOR HEARING. [6]

D. AN ISSUE OF BASIC CHARACTER QUALIFICATION IS WARRANTED AS TO THE SIX STATIONS [10]

E. AN ISSUE IS NEEDED TO EXPLORE A 47 C.F.R. SECTION 7.3588 REPORTING VIOLATION [13]

F. ISSUES REQUESTED [14]

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
	) MB Docket No. 16-357
Entercom License, LLC	) Facility ID No. 65483
Applications for Renewal of License for Station	) File Nos. BRH-20050728AUU
KDND(FM), Sacramento, California	) and BRH-20130730ANM

PETITION TO ENLARGE ISSUES

Media Action Center and Sue Wilson, by their attorney, here petition to enlarge issues in this proceeding. This petition is filed pursuant to Section 1.229 of the Rules and Regulations, within fifteen days of the publication of a summary of the Hearing Designation Order¹ in the Federal Register, 81 FR 94371-94374, December 23, 2016.

A. SUMMARY OF THE ARGUMENT

Based principally on the same facts adduced by the Commission to support the original designation, petitioners submit that additional issues are needed as a matter of fact, policy, and law. Specifically, the foolish on-air contest stunt that resulted in the negligent homicide death of Jennifer Lea Strange flowed from an abandonment of oversight and responsibility, not by KDND staff, but by a completely intertwined, interconnected and mutually organized and managed entity known as Entercom Sacramento License, LLC.² The special verdict in the civil case in Sacramento

¹ FCC 16-153, released on October 27, 2015 (hereinafter, HDO).

² “The original applicant was Entercom Sacramento License, LLC, a wholly-owned subsidiary of Entercom Communications Corp. (“Entercom Corp.”)” HDO at fn. 1. The HDO pervasively and confusingly conflated the two entities by using the shorthand for both, “Entercom Corp.”

Superior Court answered the question “Was Entercom Sacramento negligent?” The answer: “Yes.”

Because stations in Entercom Sacramento operated under the same management, practices, and resource constraints, there is no reason to exclude the other stations in the cluster from the renewal issues already designated for hearing – stations KUDL (FM) , Facility ID 65889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID 11281. All these stations have renewal application accepted for filing but not granted. On the facts known from the HDO and elsewhere, issues are needed to determine whether or not they have served the public interest during the renewal term, so as to be granted renewal.

Our second point of enlargement centers on the failure of HDO to put forth an issue of character qualification, or disqualification, based on the facts already adduced. Petitioners had requested an issue of basic character qualification, and this was rejected in fn. 122 of the HDO. We believe the explanation for that exclusion is unpersuasive, and we ask that a character issue be added as it concerns Entercom Sacramento.

The third area of requested enlargement was a reporting violation. By not reporting the terms of the settlement agreement of the lawsuit with plaintiffs, which included agreement to withdraw the decedent's family's complaint at the FCC,

Entercom Sacramento failed to report, in violation of Sec. 73.3588 of the Rules.

***B. NEGLIGENCE, INATTENTION AND LACK OF OVERSIGHT WERE
PERVASIVE ACROSS THE FULL SACRAMENTO CLUSTER***

Radio broadcasting has been transformed since 1996, when the Telecommunications Act of 1996 directed the sunset of all numerical restrictions on nation-wide radio ownership, Public Law 104-104, at Sec. 202(a), 110 Stat. 110. There have emerged a handful of group owners, acquiring as many as 100 stations, or more.³ Their business model is not mysterious. Local stations are grouped in clusters to be co-managed by a single hand, typically a vice president, charged with consolidating operations, eliminating duplication and, so far as possible, maximizing revenue and minimizing costs. Compensation of staff is closely tied to market performance, whether market rank or quarterly ratings. Entercom Sacramento was such a station cluster, which also happened at the time to be within the administration of a common subsidiary, Entercom Sacramento, LLC. It share a common office facility,⁴ indeed even shared the lunch room where the notorious contest was staged.⁵

Petitioner submit that within this cluster, through a combination of inattention and cost pressure, two core licensee duties completely atrophied to the point of non-existence: (1) the duty to assure licensee compliance with FCC rules and policies; and (2) the duty of the licensee to maintain oversight and control. While the homicide

3 See Ownership Report BOS-20151222BAS for Entercom Communications Corp. (97 stations).

4 Attachment A, Declaration of Sue Wilson.

5 Attachment B, Deposition of John Geary (excerpt).

by negligence of Ms. Strange is indeed a singular event demanding close attention, the licensee failure was much broader:

It was entirely foreseeable that uninformed employees would be likely to violate policies – it was only a question of time until it happened. The only matter that could not have been foreseen was the precise form the misconduct would take.

Walton Broadcasting Inc. (KIKK), Tucson, Arizona, 78 FCC 2d 857 (1980), at 869.

The HDO presents a devastating overview of the policy awareness vacuum and absence of oversight within the Sacramento cluster. The cluster essentially was on its own in matters of FCC compliance, because Carmela Masi, the corporate official in Pennsylvania assigned to this task by penny-pinching management, had a crushing work load (HDO fn. 239). Unable to respond to the particulars of individual inquiries, she generally told station personnel to use their best judgment (HDO para. 71).

At the cluster level, Robin Pechota was promotions director. At trial she testified that the hosts often ran contests without any notice to her, much less approval, or made snap decisions without vetting the contests with legal, HDO, para. 77. Her duties involved substantial matters other than contests. As she testified, “I was very busy.” *Id.* John Geary, vice president and Sacramento Market Manager, did not implement compliance safeguards or supervise [station manager] Weed and Pechota when it came to contests, HDO para. 72. “I do not have day-to-day involvement with contests or promotions at Entercom.” HDO at 76. He testified he

believed those chores would be carried out by the Entercom legal department (i.e. Ms. Masi in Pennsylvania), HDO para. 72. The HDO concludes: "Geary, Weed and Pechota's detachment from the Contest operations raises a serious question as to whether Entercom simply abdicated supervision of the Show's contest activities in light of the Show's high rating and resulting contribution to the licensee's financial bottom line." (HDO para. 79). A declaration by John D. Geary⁶ notes that he supervised 130 employees "and all facets of the operations of six radio stations owned by Entercom Sacramento LLC," (p. 2). He depicts an almost hermetic isolation of this unit in all facets of the business from the nominal mother ship in Pennsylvania.

In its opposition to the petition to deny the renewal of KDND, Entercom License LLC stated that "the jury found in favor of Entercom (Licensee's parent) on all claims, which were grounded on alleged negligence in Entercom's contest standards and policies." This claim is at least disingenuous, if not downright deceptive. The jury found⁷ in Question 3: Was Entercom Communications Corp. negligent?" Ans.: "No." On Question 1, "Was Entercom Sacramento negligent?" The answer was: "Yes." Question 2: "Was Entercom Sacramento's negligence a substantial factor in causing harm to Jennifer Strange?" the answer was: Yes." This apparently deliberate confusion by the Entercom parties carried over to the HDO, which gave the two entities the same short-hand name, "Entercom Corp." fn. 1.

6 Attachment C, Declaration of John D. Geary, June 26, 2008.

7 Attachment D hereto, "Special Verdict."

That the six stations were collectively remiss, and collectively culpable also is shown by the release form that was used (unsuccessfully) for Ms. Strange and the other contestants, Attachment E. It collectively releases six stations by named call sign, not just KDND.

C. BASED ON THIS RECORD, THE COMMISSION HAS AUTHORITY UNDER SECTION 309(K) TO DESIGNATE RENEWALS OF ALL THE SACRAMENTO CLUSTER STATIONS FOR HEARING.

There is a strange disconnect in the Hearing Designation Order between the sweeping indictment of corporate malfeasance and the narrow decision to add issues regarding only the KDND renewal. The reasoning is not entirely clear, but may be inferred from a Memorandum Opinion and Order, *Entercom License LLC* [the “Westborough Decision”], rejecting renewal challenges to Entercom stations in Massachusetts, New York State and Washington State, FCC 16-141 released on October 27, 2016. This was done with full Commission awareness of the HDO herein and was released on the same day. The Commission claimed in fn. 13 that it is limited to consideration of the licensee's operation of the station for which renewal is sought, based on 47 U.S.C Section 309(k)(1). The discussion claims have located a bar to any cross-renewal use of adverse findings, based on the phrase *with respect to that station* [Commission's emphasis].

We believe this reading of Section 309(k) is wrong. The Section was added by the Telecommunications Act of 1996, in a revision the main purpose of which was to

foreclose consideration of competitors during the renewal process. The Section provides:

(k) Broadcast Station Renewal Procedures

(1) Standards for renewal. – If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license –

(a) the station has served the public interest, convenience and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations of the licensee of this Act or then rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

The phrase, “with respect to that station” furthered to the Congressional purpose of barring comparative renewals, where the incumbent previously might have been adjudged versus a competitor, and making sure that the licensee's record alone was at issue.⁸ It harmonized and made consistent all the provisions of 309(k). As is evident from the choice of words, it did not bar consideration of “serious violations” by the licensee or “a pattern of abuse” by either -- the station or the licensee.

This reading is valid from the face of the Statute. But it is confirmed by the legislative history. The conference report, No. 104-458, January 3, 1996, noted the choice of then Section 204 between Senate and house versions. Under the Senate version

A broadcaster would apply for its renewal, and the Commission would grant

⁸ 309(k)(4) “Competitor Consideration Prohibited – In making the determination specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.”

such renewal, if during the preceding term of its license the station has served the public interest, convenience and necessity, has not made any serious violations of the Communications Act or of the Commission's rules, and has not, through other violations, shown a pattern of abuse.

Note that each issue in the Senate version is "station" specific. The conferees adopted the House version, which provided in Section 305:

Subsection (k) allows for Commission consideration of the incumbent broadcast licensee without the contemporaneous consideration of competing applications [the *with respect to that station* restriction]. Under this subsection, the the Commission would grant a renewal application if it finds that the station, during its term, had served the public interest, convenience and necessity; there had been no serious violations *by the licensee* [emphasis added] of the Communications Act or Commission rules, and there had been no other violations of the Communications Act or Commission rules which, taken together, indicate a pattern of abuse.

In short Congress preferred and adopted the version that recognized valid and broad inquiry into licensee violations and into station or licensee patterns of abuse.

The record set forth in the HDO amply shows both serious violations, resulting in a negligence verdict against the Sacramento group collectively, and a group-wide outage of oversight and control. Accordingly issues are needed to determine whether or not the pending renewal applications should be granted for KUDL (FM) , Facility ID 65889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID1128.⁹

The HDO found that the Entry of Judgment upon a jury verdict and the facts

⁹ No doubt Entercom would like to have the Commission revert to "square one" and adduce facts through a Notice of Inquiry, then proceed with a separate hearing designation order, or separate hearing pursuant to Section 312 of the Act. No law or policy requires this result. Entercom is thoroughly on notice of the core allegations, and would have the full opportunity to show with respect to any station why its treatment under the law should differ. Judicial economy also favors the adduction of evidence here not six times, but only once.

therein established in the trial by sworn testimony were a basis to designate the public interest question for hearing, HDO para. 31. That the verdict found Entercom Sacramento, the stations collectively, negligent and such negligence a proximate cause of Ms. Strange's death should be sufficient for the same issues to be applied across the group.

In a group owner case involving a kidnapping hoax news story, the Commission, revoking the license, stated:

The misconduct can be traced directly to the licensee's failure to require promotion formats be approved, its failure to transmit and to emphasize the substance of its policies to its station manager, its failure to assure that the manager understood its policies, its failure to check and see if he transmitted the information to on-the-air personnel, and its failure to understand and inculcate the most elementary principles of public trusteeship.

Walton Broadcasting Inc. (KIKX), 78 FCC 2d 857 (1980) at 870.¹⁰ Here it was only fortuitous that the documented lapses in oversight and control in Entercom Sacramento led to only one negligent homicide. That other stations are implicated here is consistent with Section 309(k) because of the near total overlap in facts and circumstances.¹¹

¹⁰ See *Trustees of the University of Pennsylvania WXPB (FM)*, 69 FCC 2d 1394 at 1396-7: "Moreover the Commission has long held that licensees are responsible for their employees' conduct since '[o]nly by holding a licensee responsible for the operation and management of the station, and only by insistence that the reins be held by the licensee, can there be any reasonable assurance of responsible station operation and management.'" [citations omitted]

¹¹ The Westborough case was decided correctly because the petitioner failed to produce evidence that would link those stations with the misconduct documented as widespread in Entercom Sacramento. At the same time, we strongly disagree with the refusal to consider indecency complaints where they involved Entravision Sacramento stations, see HDO para. 28. There it is said, "Section 309(k)(1) limits the scope of our review to the station for which license renewal is being considered." As discussed above in detail, this interpretation of Section 309(k) is wrong and the language should be vacated.

D. AN ISSUE OF BASIC CHARACTER QUALIFICATION IS WARRANTED AS TO THE SIX STATIONS

Our Petition to Deny sought a basic qualifying issue against Entercom, contending that it lacked the character qualifications to remain a Commission licensee. This was based on specific allegations, now close to being well established as fact, that (A) KDND management knew they were promoting a deadly stunt but did not tell contestants (pp. 7-90; (B) Entercom staff ignored Ms. Strange and other contestants' illnesses (pp. 9-10); Entercom's corporate structure favors ratings over safety (pp. 11-12).

The Commission denied this relief in fn. 122. There the Commission repeats its crabbed, self-limiting and incorrect gloss on 47 U.S.C. Section 309(k)(1). It then states: "The limited scope of our review of renewal applications under the Act does not include consideration of questions of character that do not involve serious violations of the Act or Rules." Question: Here, where a compliance vacuum led to a negligent homicide, what was not serious?

In response to the allegations regarding character qualifications, Entercom argued that adjudicated civil negligence is not a category of "non-FCC behavior of concern" that is taken into account in any character analysis, HDO para. 13.¹² The HDO, by confining itself to renewal issues, does not specifically reject this claim. But given the intermediate findings here, the claim cannot stand: "In view of the fact

¹² "Moreover, Entercom points out that at the Trial, licensee parent Entercom Corp. was found not negligent by the jury." *Id.* As we have discussed, the HDO has largely been guided by this bald deception.

that the Contest was conducted and aired over a broadcast facility licensed by this Commission, we believe that the record calls into question whether Entercom has operated the station in the public interest,” HDO at 34, see paras. 31-34 *passim*.

The Commission's 1986 Character Policy Statement¹³ noted as a general proposition on attribution of employee misconduct: “Merely standing back and waiting for disaster to strike or for the Commission to become aware of it will not insulate corporate owners from the consequences of misconduct,” *Id.* At 1218. Turning to the question of whether misconduct at one station can be predictive of behavior at a group licensee's other stations, the Commission declined to adopt any such presumption. However, “some behavior may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license,” *Id.* 1223. This was considered to be a question of fact to be resolved on a case-by-case basis. Petitioners submit that, for the Entercom Sacramento group, operations were so intertwined, the abdication of compliance so pervasive and well documented, and the jury verdict of collective guilt in a negligent homicide so clear that addition of a character issue for this group is necessary and appropriate. Because the same factual record is absent with respect to non-Sacramento Entercom stations, the test for for a character issue as to them is not met.

If no character issue is added for Entercom Sacramento, the perpetrators are

¹³ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (*Character Policy Statement*)

likely to have escaped this debacle with little or no cost. The monetary judgment in Sacramento Superior Court was paid for by insurance.¹⁴ In a pure renewal setting, the Commission invites Entercom to “to raise additional facts and circumstances, including those not related to the Contest, that may be relevant to our public interest determination.” HDO para. 82. There is no precedent for weighing or conducting an overall balancing, as between a wrongful death on the one hand, and on the other hand the use of unsold station time to run PSA's or the sponsorship of a job fair or a charity drive. Rest assured that the full might of a publicly traded company will be deployed, though as many appeals and successions of judges and Commissioners as necessary, to assure that the final renewal sanctions are no big irritant. A character issue against Entravision Sacramento is warranted based on overwhelming evidence, and may be the only way to convince the regulatee that compliance is a necessary part of doing business as a licensed enterprise.

The public and the Commission were granted a rare window into the driving force and culture of Entravision Sacramento. It came in the deposition of Matthew Carter, one of the producers.¹⁵ He related the events of the meeting, the day after Ms. Strange death was confirmed, in which John Geary terminated programming staff.

¹⁴ “Except as described below, there have been no material developments relating to the legal proceedings described in our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the Securities and Exchange Commission on February 26, 2009:

During January 2007, a suit seeking various damages was filed against us relating to an on-air contest. The claims, which were settled in October 2009, were fully covered by our insurance policies.” Entercom Communications Corp. form 10Q for quarter ended 9/30/2009, filed with SEC.

¹⁵ Excerpt Attachment F hereto.

A. He said – he passed out checks; said our employment with Entercom is now over. He was very vague. I remember right then Trish asked, “So you’re blaming us for all of this?” And he stuck to what he was saying, instead of answering the direct question and whatnot.”

* * *

A. Maney, in an attempt to almost beg, said, “You can’t fire us before the book comes out. You just take a look at the book. You can’t fire us now.”

And so Jennifer Lea Strange, by the jury found not to have contributed to her injury by her own negligence, perished at the hand of a Company where its workers could not imagine any ultimate value that surpassed the rating book, real life imitating art.¹⁶

E. AN ISSUE IS NEEDED TO EXPLORE A 47 C.F.R. SECTION 7.3588 REPORTING VIOLATION

After the jury verdict adverse to Entercom Sacramento, the defendants entered into a settlement with the successful judgment creditors, based on the family’s acceptance of “payment or performance other than specified in the judgment.” (HDO para. 10) In furtherance of the agreement, the family withdrew their complaint at the Commission, by letter of November 9, 2010, HDO fn. 38. The substance of the complaint no longer is available in the record, and the terms of this agreement were never reported to the Commission, as required by Sec. 73.3588 of the Rules.¹⁷ The

¹⁶ 182. A BANK OF FOUR TELEVISION MONITORS

It is 7:14 p.m. Wednesday, July 9, 1975, and we are watching the network news programs on CBS, NBC, ABC, and UBS-TV. The AUDIO is ON: headshots of WALTER CRONKITE, JOHN CHANCELLOR, HOWARD K. SMITH, HARRY REASONER, AND JACK SNOWDEN, SUBSTITUTING FOR HOWARD BEALE, interspersed with tapes of the horrible happening at UBS the day before, flit and flicker across the four television screens. Television continues relentlessly on.

NARRATOR (OVER): This was the story of Howard Beale who was the network news anchor on UBS-TV, the first known instance of a man being killed because he had lousy ratings.

- Script of *Network*, revised 12/31/1975

¹⁷ § 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.

peculiar circumstances here are that the defendants, possibly having points for an appeal, cut off that process by obtaining assent to a cash settlement. Part of the settlement package was the withdrawal of plaintiff's broadcast license related complaint at the Commission. The confidentiality agreement as to the settlement benefited only the defendants, served no valid business purpose, and became a means of evading Sec. Sec. 73.3588. Entercom Sacramento should be required to disclose all the terms of the settlement and submit the showings required by rule. A reporting violation issue is needed.

F. ISSUES REQUESTED

(j) To determine whether Entercom Sacramento, a subsidiary of Entercom, failed to properly train and exercise appropriate supervision of staff with respect to FCC compliance matters at stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);

(a) Whenever a petition to deny or an informal objection has been filed against any application, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

- (1) A certification that neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny;
- (2) The exact nature and amount of any consideration received or promised;
- (3) An itemized accounting of the expenses for which it seeks reimbursement; and
- (4) The terms of any oral agreement related to the dismissal or withdrawal of the petition to deny.

(k) To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License, LLC operated Stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM) in the public interest during the most recent license term;

(l) To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom's applications for renewal of licenses should be granted, as follows:

KUDL (FM) File No. BRH-20130730ANC

KIFM (AM) File No. BRH-20130730ANG

KKDO(FM) File No. BRH-20130730AND

KRXQ (FM) File No. BRH-20130730ANI

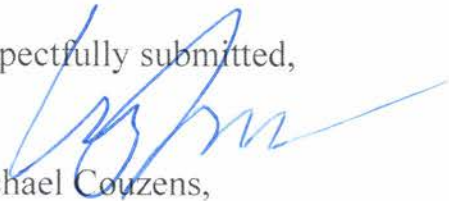
KSEG (FM) File No. BRH-20130730ANK.

(m) To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License LLC possesses the necessary character attributes of reliability and legal compliance to be a Commission licensee of Stations KDND (FM), KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);

To determine whether Entercom License LLC violated Section 73.3588 of the Rules, by failing to report to existence or terms of a settlement agreement, whereby judgment creditors in the case of *William A. Strange et al. v. Entercom Sacramento*

LLC et al. agreed to dismiss their FCC filing pending against the defendants.

Respectfully submitted,



Michael Couzens,
*Attorney for Media Action Center
and Sue Wilson.*

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January 9, 2017.

ATTACHMENT A

DECLARATION OF SUE WILSON

Sue Wilson makes the following sworn declaration:

On more than one occasion, I visited Entercom Sacramento at 5345 Madison Avenue in Sacramento to inspect their public files.

Entercom Sacramento is housed in a 25,000 square foot one story brick office building with the Entercom logo boldly facing the busy Madison Avenue corridor. There is a large parking lot there for the entire Entercom staff. The front door features the Entercom Sacramento logo, along with the words "Radio Stations Entrance."

Walking in the front door, the spacious reception room features a decorative wooden wall with the "Entercom Sacramento" logo in the center, and logos for "107.9 The End" (KDND,) "Eagle 96.9," (the two Entercom Sacramento stations I listen to,) and also the four other stations operated within that building.

It's a busy place with a raucous atmosphere, with Deejaays and staffers from various departments at the various stations coming through the reception room. I remember a

1 pair of local rock celebrities bopping down a hallway, and I
2 was told they were going to the station KRXQ for an interview.

3 To complete the public files inspection, I was escorted to
4 a small interior office which served as office for a female
5 staffer at Entercom Sacramento. The space designated for file
6 inspections was at the foot of her desk, about a two foot wide
7 space with a computer which could only be used while
8 standing. (Although I took notes for about two hours each
9 time, no chair was ever offered.) The computer contained the
10 files for all six Entercom Sacramento stations, not just KDND,
11 and I perused each one, spending most of my time in the
12 KDND file.
13
14
15
16

17 The foregoing is stated from my personal knowledge,
18 under the penalties for perjury provided in the law of the
19 United States.
20

21 Dated: January 8, 2017

22 By 
23 Sue Wilson
24
25
26
27
28

ATTACHMENT B

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

---oOo---

WILLIAM STRANGE, individually,
and as Guardian ad Litem for
RYLAND STRANGE and JORIE STRANGE,
Minors; RONALD SIMS, as Guardian
Ad Litem for KEEGAN SIMS, a minor,

Plaintiffs,

v.

No. 07AS00377

ENTERCOM SACRAMENTO, LLC,
ENTERCOM COMMUNICATIONS, CORP.,
JOHN GEARY, STEVE WEED,
ROBIN PECHOTA, LIZ DIAZ,
ADAM COX, STEVE MANEY,
PATRICIA SWEET, MATT CARTER,
And DOES 1-40, inclusive,

COPY

Defendants.

---oOo---

9:00 a.m.

June 27, 2007

DEPOSITION OF JOHN GEARY

Reported by: SHERREE L. BLAKEMORE, CSR No. 7144

Royal

REPORTING SERVICES

1333 Howe Avenue, Suite 100, #5
Sacramento, California 95825
916.564.0100

11:25:40 1 So I said okay. And I walked down the hall and --
11:25:45 2 left my office, walked down the hall towards the kitchen,
11:25:46 3 and it's a long hallway, past our main conference room,
11:25:51 4 down to where the kitchen is.

11:25:55 5 And as I approached it -- the wall kind of flares
11:25:56 6 out a little bit as you approach it -- and as I approached
11:25:59 7 it, I could see just people standing. Obviously something
11:26:01 8 was going on in the kitchen. I could see people standing
11:26:04 9 there. And it was loud. And as I approached it, and, you
11:26:09 10 know, probably got to about, I would say, ten feet of
11:26:14 11 where the entrance was, I believe it was Matt Carter,
11:26:16 12 because he's taller than the rest, and I -- it was either
11:26:21 13 him or Jessica. I made eye contact with them, and yelled
11:26:24 14 at them, "You guys have got to hold it down," and then he
11:26:31 15 acknowledged with a nod, and then I turned around and went
11:26:31 16 back to my office.

11:26:32 17 Q I appreciate you telling me that. Again, this is
11:26:35 18 the best opportunity for you to be candid and complete
11:26:39 19 when we ask you these questions.

11:26:42 20 So let me do a chronology for us, here, and you
11:26:44 21 correct me if I'm wrong.

11:26:46 22 Get to work, 6:30, 6:45; you hear some noise,
11:26:53 23 because people are around. And we'll characterize that
11:26:55 24 noise as out of the ordinary. True? Or was it ordinary?

11:27:02 25 A To me it's ordinary, in the sense that this is a

11:27:05 1 morning show. They have people in the building on
11:27:07 2 occasion.
11:27:07 3 Q So nothing that raised a flag for you. True?
11:27:10 4 A Absolutely.
11:27:11 5 Q And you went to work and did your thing, and then at
11:27:15 6 nine o'clock, approximately, someone came to you from the
11:27:19 7 sales department and said, it's loud. "We can't -- it's
11:27:25 8 impacting our ability to do our job." Words to that
11:27:25 9 effect?
11:27:25 10 A It was sometime in the nine o'clock hour as opposed
11:27:29 11 to at nine o'clock.
11:27:30 12 Q Between 9:00 and 9:30; 9:00 and 10:00?
11:27:35 13 A I would say 9:00 and 10:00.
11:27:40 14 Q Who was this person?
11:27:40 15 A Her name was Michele Hiller.
11:27:41 16 Q And Ms. Hiller; what is her job capacity?
11:27:44 17 A Michele is a salesperson for a group of our radio
11:27:49 18 stations.
11:27:49 19 Q She could have been working for KDND or any of the
11:27:55 20 other stations. True?
11:27:55 21 A No, that's not correct. Stations that she
11:28:00 22 represents were three different stations, other than KDND.
11:28:01 23 Q And does she have a boss?
11:28:03 24 A Yes, she does.
11:28:04 25 Q Who is her boss?

ATTACHMENT C

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Attorneys for Defendants ENTERCOM
 SACRAMENTO, LLC, ENTERCOM
 COMMUNICATIONS CORP.
 and JOHN GEARY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SACRAMENTO

WILLIAM A. STRANGE, individually,
 and as Guardian *ad Litem* for RYLAND
 STRANGE and JORIE STRANGE,
 minors; RONALD E. SIMS, as Guardian
ad Litem for KEEGAN SIMS, a minor,

Plaintiffs,

v.

ENTERCOM SACRAMENTO, LLC,
 ENTERCOM COMMUNICATIONS
 CORP., JOHN GEARY, STEVE WEED,
 ROBIN PECHOTA, LIZ DIAZ, ADAM
 COX, STEVE MANEY, PATRICIA
 SWEET, MATT CARTER, and DOES 1
 through 40, inclusive,

Defendants.

Case No. 07AS00377

DECLARATION OF JOHN D. GEARY IN
 SUPPORT OF MOTION FOR SUMMARY
 ADJUDICATION OF ISSUES BY
 DEFENDANTS ENTERCOM
 SACRAMENTO, LLC, ENTERCOM
 COMMUNICATIONS CORP. AND
 JOHN GEARY

Date: June 26, 2008

Time: 2:00 p.m.

Dept: 53

Complaint filed: January 25, 2007

FOLGER LEVIN &
 KAHN LLP
 ATTORNEYS AT LAW

DECLARATION OF JOHN D. GEARY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION; CASE NO. 07AS00377

1 I, John D. Geary, declare:

2
3 1. I am the Vice President and Market Manager for Entercom Sacramento, LLC. I
4 have held this position since April, 1998. I make this declaration in support of the motion of
5 Defendants Entercom Sacramento, LLC, Entercom Communications Corp., and John Geary for
6 summary adjudication. I have personal knowledge of the matters set forth in this declaration, and
7 could and would competently testify thereto under oath if called upon to do so.

8 **A. SUMMARY OF TESTIMONY**

9 2. In my capacity as Vice President and Market Manager for Entercom Sacramento,
10 LLC, I oversee about 130 employees and all facets of the operations of six radio stations owned
11 by Entercom Sacramento, LLC, including radio station KDND (FM Radio 17.9). The nature of
12 this oversight role requires me to delegate various day-to-day responsibilities to others, including
13 the responsibility for the planning, approving and oversight of contests or promotions hosted by
14 the radio stations. As a result, I generally have no role in connection with contests or promotions
15 held by Entercom Sacramento, LLC's radio stations.

16 3. I had no involvement with the planning, approval, execution or monitoring of
17 KDND's "Hold Your Wee for a Nintendo Wii Contest" (hereinafter sometimes referred to as the
18 "Contest") that was held in the morning of January 12, 2007 between approximately 6:00 a.m.
19 and 9:20 a.m. I did not meet or speak with any of the contestants. I was unaware of the Contest
20 before it occurred on January 12, 2007 and was not advised of the details of the Contest until after
21 I learned of the death of Jennifer Strange at approximately 3:45 p.m. to 4:00 p.m. on January 12,
22 2007. My only connection with the Contest was sometime after 9:00 a.m., when an employee
23 (Ms. Mickey Hiller) complained of noise in the kitchen, hindering her ability to work, in
24 response to which I advised KDND personnel to hold the noise down.

25 4. I am aware that Plaintiffs in this action allege in their Complaint that Steve Weed,
26 Robin Pechota Ray, and Ellaheh Baghaei (Liz Diaz) are "managing agents" of Entercom
27 Sacramento, LLC and of Entercom Communications Corp. However, these individuals are not
28 managing agents of either Entercom Sacramento, LLC or Entercom Communications Corp., nor

1 are they officers or directors of these companies. These individuals were not even employed by
2 Entercom Communications Corp., and although they were employees of Entercom Sacramento,
3 LLC, their responsibilities are very limited, as discussed below.

4 **B. MY RESPONSIBILITIES AT ENTERCOM SACRAMENTO, LLC**

5 5. Entercom Sacramento, LLC is a wholly-owned subsidiary of Entercom Radio,
6 LLC, which, in turn, is a wholly owned subsidiary of Entercom Communications Corp. (which is
7 headquartered in Bala Cynwyd, Pennsylvania). Entercom Sacramento, LLC owns six radio
8 stations in the Sacramento market. One of the stations, KDND (FM Radio 107.9), was the entity
9 that hosted the "Hold Your Wee for a Win" Contest. KDND is not a corporate entity; rather, it is
10 a radio station owned and operated by Entercom Sacramento, LLC.

11 6. As Vice President and Market Manager for Entercom Sacramento, LLC, my job
12 responsibilities, both in January 2007 and at the present time, included oversight of numerous
13 departments at Entercom Sacramento, LLC, including sales staffs (which includes the general
14 sales department, the group sales department and the national sales manager) for all six stations;
15 the business department (which includes business, finance, and accounting); the information
16 technology ("IT") department (headed by a chief engineer who makes decisions regarding
17 transmitters, studio equipment and other IT equipment); the marketing (Fusion) department; the
18 traffic and continuity department (charged with ensuring that advertising spots are properly
19 produced, placed, and aired on the stations); the programming department; the promotions
20 department; and the productions department.

21 7. My job responsibilities also include overseeing the preparation of business plans
22 for each of the six stations and the preparation of pro forma financial statements for each of the
23 six stations. On an ongoing basis, I monitor the financial performance of each station and the
24 compliance of each station with its business plan. I also oversee and make personnel decisions,
25 including the hiring and firing decisions at Entercom Sacramento, LLC.

26 **C. ROBIN RAY PECHOTA HAD RESPONSIBILITY FOR PREPARING RULES FOR CONTESTS AND FOR FOLLOWING ENTERCOM'S CONTEST GUIDELINES**

27 8. Prior to the Contest, Entercom Communications Corp. had developed written
28

1 guidelines for contests. The policies, entitled "Entercom Communications Corp. General Contest
2 Guidelines" were circulated on August 31, 2006 by Ms. Carmela Masi, counsel in Entercom
3 Communications' Legal Department, to promotions directors (including Robin Pechota Ray),
4 program directors/station managers, myself, and others. In the August 31, 2006 email (Dep.
5 Ex. 30) circulating the General Contest Guidelines to, among others, Robin Pechota Ray,
6 Ms. Masi wrote:

7 With the exception of simple contests, contest rules must be
8 submitted for review by your Entercom Legal representative. This
9 is especially true for any unusual or complicated mode of entry,
10 winning or any large prize (valued at more than \$10,000). A simple
11 contest is one in which the form of rules have been approved before
12 by Entercom Legal, that fall under the Station's generic contest
13 rules (used only for simple one-off call-in, on-site or on-line simple
14 random selection contests... 9th caller for a stereo system or concert
15 tickets, entry to win CD at a station event, on-line entry to
16 randomly select one winner of a TV, etc...) and that do not include
17 any unusual mode of entry/winning or large prize. When in doubt
18 as to whether a giveaway fits into your generic contest rules, check
19 with your Entercom Legal representative.

20 9. At the time of the Contest, Robin Pechota Ray was the promotions director for
21 Entercom Sacramento, LLC, including radio station KDND. She reported to Steve Weed
22 (promotions director/station manager for KDND), who, in turn, reported to me. At the time of the
23 Contest (January 12, 2007), Robin Pechota Ray had responsibility for overseeing the planning
24 and approval of contests, including the Hold Your Wee for a Wii Contest, for preparing rules for
25 contests, for monitoring contests and for complying with the General Contest Guidelines.

26 10. I was advised by Robin Pechota Ray after the Hold Your Wee for a Wii Contest
27 occurred that she did not provide rules for the Contest or submit the Contest to the Legal
28 Department for review; hence, no employee (or officer, director or managing agent) of Entercom
Communications Corp. had any involvement with the Contest, including with its planning,
approval, or oversight. (None of the Individual Defendants in this lawsuit were employed by
Entercom Communications Corp.)

D. I DO NOT HAVE DAY-TO-DAY INVOLVEMENT WITH CONTESTS

11. I had no involvement with the preparation of the General Contest Guidelines,
which I understand were prepared and circulated at various times by the Legal Department of

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DECLARATION OF JOHN D. GEARY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION; CASE NO. 07AS00377

1 Entercom Communications Corp. I do not have day-to-day involvement with contests or
2 promotions at Entercom Sacramento, LLC, including KDND. I do not become involved in the
3 process of planning contests or submitting contests to Entercom Communications Corp.'s Legal
4 Department for review. While certain KDND personnel attend weekly meetings at which
5 contests may be suggested, discussed and planned, I do not attend these meetings.

6 12. As a general matter, I do not become involved in the planning, approval,
7 monitoring, or execution of the contests. However, in some instances, a particular aspect of a
8 contest may be brought to my attention. For example, my approval might be sought concerning
9 whether Entercom Sacramento, LLC would be willing to pay for an extravagant prize, such as
10 paying a contestant's mortgage. However, in this case, I was not advised of and was unaware of
11 KDND's Hold Your Wee for a WH Contest before it occurred.

12 **E. I HAD NO INVOLVEMENT WITH THE CONTEST**
13

14
15 13. I had no involvement in the planning, approval, execution or monitoring of the
16 Contest. I had no discussions with anyone, including any Entercom Sacramento, LLC personnel,
17 regarding the planning, approval, execution or monitoring of the Contest until after I learned of
18 the death of Ms. Strange. I did not attend any meetings where the Contest was conceived and
19 planned. I had no involvement in the preparation or approval of any rules for the Contest. I did
20 not see the rules for the Contest that were prepared by Robin Pechota Ray (Depo. Ex. 9) until
21 after I learned of the death of Ms. Strange. Also, as Vice President and Market Manager of
22 Entercom Sacramento, LLC, I was not involved in the training of employees (including the
23 promotions directors) in the General Contest Guidelines or in the procedures to be followed in
24 connection with contests.

25 14. Some time after 9:00 a.m. on January 12, 2007, Ms. Micheryl Hiller, a salesperson
26 at Entercom Sacramento, LLC whose open work space was near the kitchen, came to my office
27 and complained to me about noise coming from the kitchen making it difficult for her to make
28 telephone calls. In response to Ms. Hiller's complaint, I simply walked down to the entry to the

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DECLARATION OF JOHN D. GEARY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION; CASE NO. 07AS00377

1 kitchen area and requested a KDND employee that I saw to keep the noise down. I did not have
2 any discussions with the contestants and did not get involved at all with the event in the kitchen.

3 15. After learning of the death of Ms. Strange, I also learned who was involved with
4 the Contest, including, among others, Robin Pechota Ray (the promotions director), Steve Weed
5 (program director/station manager for KDND), Ellahch Baghaci ("Liz Diaz") (producer for the
6 KDND morning show), and the morning on-air talent. None of these individuals had ever been
7 reported to have done anything resulting in an injury to a listener or participant in a promotion or
8 contest in the past. None of these individuals and no one at Entercom Sacramento, LLC has been
9 the subject of any criminal prosecution as a result of their involvement in the Contest. The
10 District Attorney for Sacramento County declined to bring any criminal charges in connection
11 with the death of Jennifer Strange following her participation in the Contest, instead issuing a
12 "Case of Interest" report (dated April 2, 2007) in which it was stated, among other things, that
13 Ms. Strange "evidenced no symptoms which would lead a reasonable person to conclude that she
14 was seriously ill or in danger of dying" and that the "facts and circumstances of this ill-fated
15 event do not support the filing of criminal charges against the radio station or any of its
16 employees."

17 16. On behalf of Entercom Sacramento, LLC, on January 16, 2007, I terminated
18 various individuals whom I learned were involved with the Contest, including all of the individual
19 defendants named in this action. No officer, director, or managing agent of Entercom
20 Sacramento, LLC was involved with the Contest.

21
22 **F. ROBIN PECHOTA RAY WAS NOT AN OFFICER, DIRECTOR, OR MANAGING**
23 **AGENT OF ENTERCOM SACRAMENTO, LLC OR ENTERCOM**
COMMUNICATIONS CORP.

24 17. Ms. Pechota Ray was an employee of Entercom Sacramento, LLC, and she
25 reported to Mr. Weed, who in turn reported to me. She was not an employee of Entercom
26 Communications Corp. Ms. Pechota Ray was not an officer or director of Entercom Sacramento,
27 LLC or Entercom Communications Corp.

28 18. Ms. Pechota Ray was not a managing agent of Entercom Sacramento, LLC or

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DECLARATION OF JOHN D. GEARY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION; CASE NO. 07AS00377

1 Entercom Communications Corp. She did not have the authority to make policy for Entercom
2 Sacramento, LLC or for Entercom Communications Corp. Ms. Pechota Ray did not prepare the
3 Entercom General Guidelines (Depo. Ex. 30), but rather she was to follow the Guidelines.
4 Ms. Pechota Ray did not have authority to fire or hire employees. Ms. Pechota Ray's authority
5 was quite limited. Ms. Pechota Ray did not have the authority to set salaries. Ms. Pechota Ray
6 did not have responsibilities with respect to the sales, marketing (Fusion), program, business or
7 information technology departments, and the personnel from those departments did not report to
8 her. She had no authority to sign checks for Entercom Sacramento, LLC.

9
10 **G. STEVE WEED WAS NOT AN OFFICER, DIRECTOR, OR MANAGING AGENT**
11 **OF ENTERCOM SACRAMENTO, LLC OR ENTERCOM COMMUNICATIONS**
12 **CORP.**

13 19. At the time of the Contest, Steve Weed was the program director/station manager
14 for radio station KDND. Mr. Weed had no responsibility with respect to any of the other five
15 radio stations of Entercom Sacramento, LLC. Mr. Weed was not an officer or director of
16 Entercom Sacramento, LLC or Entercom Communications Corp. Mr. Weed was an employee of
17 Entercom Sacramento, LLC. He was not an employee of Entercom Communications Corp.

18 20. Steve Weed was not a managing agent of Entercom Sacramento, LLC or Entercom
19 Communications Corp. He did not have authority to make policy for Entercom Sacramento, LLC
20 or Entercom Communications Corp., but rather, he was to follow the corporate policies that were
21 relayed to him. Mr. Weed did not prepare the General Contest Guidelines; rather, he was to
22 follow the Guidelines in overseeing Ms. Pechota Ray in connection with contests and promotions
23 of KDND.

24 21. Even with respect to KDND, Mr. Weed's responsibilities were limited.
25 Mr. Weed's responsibilities as the station manager/program director of KDND were with respect
26 to overseeing the production and promotion aspects of KDND. Mr. Weed had no oversight over
27 numerous other departments of Entercom Sacramento, LLC, including the sales, marketing
28 (Fusion), business (financial) and information technology departments, and the personnel from
those departments did not report to Mr. Weed. Mr. Weed did not have authority to fire or hire

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DECLARATION OF JOHN D. GEARY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION: CASE NO. 07AS00377

1 anyone without my approval, and he did not have the authority to set salaries. Also, Mr. Weed
2 could not incur material expenses without my prior approval. He could not sign checks for
3 Entercom Sacramento, LLC. Although Mr. Weed could have offered some input from a
4 production standpoint into that portion of the business plan that dealt with KDND only, he did not
5 have responsibility for the business plan that covered all six stations or any other facets of the
6 operations of these stations.

7
8 **H. THE INDIVIDUALS WHO REPORTED TO STEVE WEED OR ROBIN**
9 **PECHOTA RAY WERE NOT OFFICERS, DIRECTORS OR MANAGING**
10 **AGENTS OF ENTERCOM SACRAMENTO, LLC OR ENTERCOM**
11 **COMMUNICATIONS CORP.**

12 22. None of the individuals who reported to Steve Weed or Robin Pechota Ray was an
13 officer, director, or managing agent of Entercom Sacramento, LLC or Entercom Communications
14 Corp.

15 23. Ellahab Baghaei ("Liz Diaz"), the producer of the morning broadcast on KDND,
16 reported to Steve Weed, and she had no responsibility with respect to other radio stations.
17 Ms. Baghaei was an employee of Entercom Sacramento, LLC and was not an employee of
18 Entercom Communications Corp. She had been on the job a little more than two months at the
19 time of the Contest. Her responsibility was primarily to field listener calls during the morning
20 show. She did not possess hiring or firing authority, the authority to set salaries or approve raises,
21 or the authority to make policy for Entercom Sacramento, LLC or Entercom Communications
22 Corp. She did not have responsibilities with respect to the sales, marketing (Fusion), promotion,
23 business, or IT departments. She had no authority to sign checks for Entercom Sacramento, LLC.

24 24. Adam Cox, Steve Maney, Patricia Sweet, Matt Carter and Pete Inzerillo were on-
25 air talent for the morning broadcast on KDND and no other station. They reported to Steve
26 Weed. They were employees of Entercom Sacramento, LLC, and were not employees of
27 Entercom Communications Corp. None of them possessed hiring or firing authority, the authority
28 to set salaries, or the authority to make policy for Entercom Sacramento, LLC or Entercom
Communications Corp. They did not oversee any departments of Entercom Sacramento, LLC.
None of them had responsibilities with respect to the sales, marketing (Fusion), promotion,

-3-

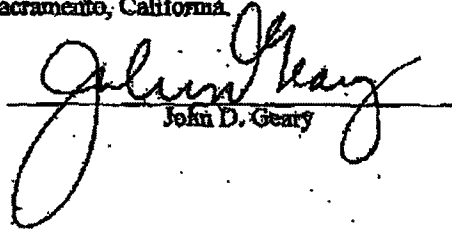
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DECLARATION OF JOHN D. GARY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION; CASE NO. 07AS00377

1 business or IT departments. None of them had authority to sign checks for Entercom Sacramento,
2 LLC. None of them was an officer, director or managing agent of Entercom Sacramento, LLC or
3 Entercom Communications Corp.

4 I declare that the foregoing is true and correct under penalty of perjury under the laws of
5 the state of California.

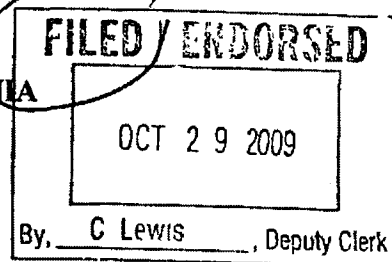
6 Executed on March 6th, 2008, at Sacramento, California.

7
8 
9 John D. Geary

10 Sub 79005373823

ATTACHMENT D

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO



WILLIAM M. STRANGE, individually, and
as Guardian ad Litem for RYLAND
STRANGE and JORIE STRANGE, minors;
RONALD E. SIMS, as Guardian ad Litem
for KEEGAN SIMS, a minor,
Plaintiffs,

Case Number: 07AS00377

Department: 27

SPECIAL VERDICT

vs.

ENTERCOM SACRAMENTO, LLC and
ENTERCOM COMMUNICATIONS,
CORP.,
Defendants.

We, the jury in the above entitled action, answer the questions submitted to us as follows:

Question No. 1

Was Entercom Sacramento negligent?

Yes ☒ No ☐

Question No. 2

If your answer to Question No. 1 is "yes," please answer the following: was Entercom

Sacramento's negligence a substantial factor in causing harm to Jennifer Strange?

Yes ☒ No ☐

Question No. 3

Was Entercom Communications Corp. negligent?

Yes ☐ No ☒

Question No. 4

If your answer to Question No. 3 is "yes," please answer the following: was Entercom Communication Corp.'s negligence a substantial factor in causing harm to Jennifer Strange?

Yes _____ No _____

If you find that Entercom Sacramento and Entercom Communications Corp. or either of them were negligent and that the negligence was a substantial factor in causing harm to Jennifer Strange, then please answer Question Nos. 5(a), 5(b), and 6-8. If you find that no defendants were negligent or that no defendants' negligence was a substantial factor in causing harm to Jennifer Strange, stop here, answer no further questions, and have the presiding juror sign and date this form.

Question No. 5

a. What are plaintiffs' total economic damages?	\$ <u>1,477,118.00</u>
b. What are plaintiffs' total non-economic damages?	\$ <u>15,100,000.00</u>
TOTAL	\$ <u>16,577,118.00</u>

Question No. 6

Was Jennifer Strange contributorily negligent in causing her harm?

Yes _____ No ✓

Question No. 7

If your answer to Question No. 6 is "yes," was Jennifer Strange's negligence a substantial factor in causing her harm?

Yes _____ No _____

If your answers to Question Nos. 6 and 7 are both "yes," then answer Question No. 8. If your answer to Question No. 6 or 7 is "no," then enter the number zero next to the name of Jennifer Strange in Question No. 8.

Question No. 8

What percentage of comparative fault do you assign, if any, to each of the following parties? Insert a percentage for Entercom Sacramento only if you answered "yes" to both Questions 1 and 2. Insert a percentage for Entercom Communications Corp. only if you answered "yes" to both Questions 3 and 4. Insert a percentage for Jennifer Strange only if you answered "yes" to both Questions 6 and 7.

Entercom Sacramento	<u>100</u>
Entercom Communications Corp.	<u>0</u>
Jennifer Strange	<u>0</u>
Total	<u>100%</u>

Dated: 10/29/09

Signed: Chd Pm
Presiding Juror

ATTACHMENT E

Entercom Sacramento

5345 Madison Avenue
Sacramento, CA 95841
Tel: 916.334.7777
Fax: 916.339.4292

Release For All Claims Including Personal Injury

In consideration of goods and valuable consideration received and to be received, I, my heirs, assignees, legal representatives, or any other party having the capacity to represent me, do hereby release Entercom Inc. KDND, KRXQ, KSEG, KCTC, KSSJ, KWOD, its subsidiaries, franchises, agents, officers, directors, employees, and all other parties in interest from all claims, demands, grievances, and causes of action either legal or equitable, including but not limited to, all damages of any kind incurred by myself or by others to me for the duration outlined herein and that I am unable to amend the aforementioned arrangements, in part or in full.

Prize: _____

I have read and understand this agreement.

Name: JENNIFER STRANGE

Address: 3041 ASTRAL DR

City: SACRAMENTO State: CA Zip: 95827

Date of Birth: 10/23/78

Phone # Work: 916-955-1734 Home: 916-370-0904

Effective this date(s): 01/2/07

Signature: Jennifer Strange

Or Signature of authorized agent/legal guardian: _____



ATTACHMENT F

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

---oOo---

WILLIAM STRANGE, individually,
and as Guardian ad Litem for
RYLAND STRANGE and JORIE STRANGE,
minors; RONALD SIMS, as Guardian
Ad Litem for KEEGAN SIMS, a minor,

Plaintiffs,

v.

No. 07AS00377

ENTERCOM SACRAMENTO, LLC,
ENTERCOM COMMUNICATIONS, CORP.,
JOHN GEARY, STEVE WEED,
ROBIN PECHOTA, LIZ DIAZ,
ADAM COX, STEVE MANEY,
PATRICIA SWEET, MATT CARTER,
and DOES 1-40, inclusive,

COPY

Defendants.

---oOo---

9:08 a.m.

April 11, 2008

DEPOSITION OF MATTHEW CARTER

Reported by: SHERREE L. BLAKEMORE, CSR No. 7144

Royal
REPORTING SERVICES

1333 Howe Avenue, Suite 228
Sacramento, California 95825
916.564.0100

1 A No.

2 Q Now, let's talk about this Monday meeting. When you
3 got -- strike that.

4 Who else showed up for this meeting on Monday, the
5 one that Steve Weed had told Maney that you had to be at?

6 A You know, I have to recall that that was a holiday,
7 that Monday. I think it was Martin Luther King holiday.
8 So it would have been the Tuesday.

9 Q So for this Tuesday meeting, who else showed up at
10 the station?

11 A Everybody that was there for the Sunday meeting.
12 They had us broken up as the show; Liz, myself, Fester,
13 Adam, Maney, and Trish. We went in, and were told we were
14 fired. And then apparently they brought in Steve Weed,
15 and Robin; but I was already out of the building at that
16 time.

17 Q When you went into this meeting where you were told
18 you were fired, besides The Morning Rave crew, who else
19 was in the room?

20 A John Geary, and attorneys and representatives of
21 Entercom.

22 Q Were these the same attorneys that you had
23 recognized from the prior meeting?

24 A I recognized one of them from the prior meeting.

25 Q And who did the talking of that group of people from

1 Entercom?

2 A John Geary did the first -- you know, the bad news.
3 And there was obviously heated emotions for Lukas, Maney
4 and Trish. And they had questions they were shooting out.
5 And that is when he stepped aside and let his attorney
6 answer all the questions.

7 Q How long did this meeting last?

8 A Five minutes.

9 Q When you said Mr. Geary handled the bad news, what
10 did he say exactly?

11 A He said -- he passed out checks; said our employment
12 with Entercom is now over. He was very vague. I remember
13 right then Trish asked, "So you're blaming us for all of
14 this?" And he stuck to what he was saying, instead of
15 answering the direct questions and whatnot.

16 He said we would have access -- he said we were
17 entitled to attorneys, and they would pay some legal fees,
18 whatever that was. He advised us to take advantage of
19 that. Advised us to keep quiet in regards to the media.
20 And that was all.

21 Q Did he tell you why he thought you might need
22 attorneys?

23 A No.

24 Q Did he explain to you why you were being terminated?
25 Did he give you a specific reason?

1 A No.

2 Q Did he relate it to the death of Jennifer Strange?

3 A Not directly.

4 Q Did he mention her name?

5 A No.

6 Q Did he mention the contest?

7 A No.

8 Q Did he refer to any contract of employment?

9 A No.

10 Q Do you recall him using the words "moral turpitude"?

11 A I do not recall those words.

12 Q Did he answer Trish's question; "So you're blaming

13 us for all of us this"?

14 MR. SULLIVAN: Asked and answered.

15 THE WITNESS: He did not answer.

16 Q BY MR. BALE: Was that question answered by anyone

17 else from Entercom?

18 A No.

19 Q You said there were questions and emotions. What

20 sort of questions did you hear coming from the folks who

21 had been fired?

22 A Maney, in an attempt to almost beg, said, "You can't

23 fire us before the book comes out. You just take a look

24 at the book. You can't fire us now. You haven't even

25 given us a chance to explain to our listeners what

CERTIFICATE OF SERVICE

I, Michael Couzens, certify that on January 9, 2017, the foregoing Motion to Enlarge Issues was served by e-mail to the following:

Hon. Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
Richard.Sippel@FCC.gov

Rachel Funk
Attorney Advisor
Office of Administrative Law Judges
Federal Communications Commission
Rachel.Funk@fcc.gov

Patricia Ducksworth
Legal Technician
Office of Administrative Law Judges
Federal Communications Commission
Patricia.Ducksworth@fcc.gov

Travis LeBlanc, Chief
Pamela Kane
Michael Engel
Enforcement Bureau
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

David H. Solomon
Robert G. Kirk
J. Wade Lindsay
Wilkinson Barker Knauer LLP
1800 M Street N.W., Suite 800N
Washington, D.C. 20036



Michael Couzens

EXHIBIT C

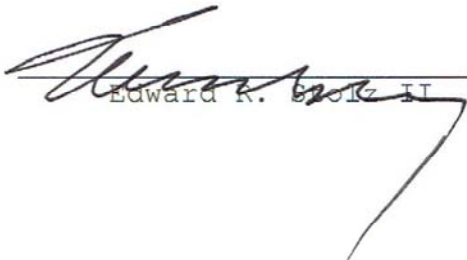
DECLARATION

Edward R. Stolz II, pursuant to Section 1.16 of the Commission's Rules, hereby declares as follows:

1. I am sole proprietor of Royce International Broadcasting Company and manager, member and 100% owner of Golden State Broadcasting, LLC, Silver State Broadcasting, LLC and Major Market Radio, LLC. Golden State Broadcasting, LLC is licensee of KREV(FM), Alameda, California. Silver State Broadcasting, LLC is licensee of KBET(AM), Winchester, Nevada and KFRH(FM), North Las Vegas, Nevada. Major Market Radio, LLC is licensee of KRCK-FM, Mecca, California.
2. KREV(FM) competes for listeners and revenues in the San Francisco radio market with radio stations licensed to Entercom License, LLC and CBS Radio East, Inc. and CBS Radio Stations, Inc.
3. KBET(AM) and KFRH(FM) compete for listeners and revenues in the Las Vegas radio market with six radio stations licensed to CBS Radio Stations, Inc.
4. KRCK-FM competes for listeners and revenues in the Palm Springs radio market with KEZN(FM), licensed to CBS Radio Stations, Inc.
5. I have reviewed the "Petition to Deny" to which this Declaration is to be attached, and the facts and circumstances stated therein are true and correct to the best of my knowledge.

The foregoing statements are true and correct and are
made under penalty of perjury.

DATED this 1st day of May, 2017


Edward R. Boyle II

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Petition to Dismiss or Deny" has been served by by e-mail and first-class United States mail, postage prepaid, or by e-mail only where shown by "*", on this 1st day of May, 2017 upon the following:

Meredith S. Senter, Jr., Esq.

Lerman Senter PLLC

2001 L Street, NW, Suite 400

Washington, DC 20036

msenter@lermansenter.com

Counsel for CBS Broadcasting, Inc. and subsidiaries

Carrie A. Ward, Esq.

Entercom Communications Corp.

Entercom License, LLC

401 E. City Avenue, Suite 809

Bala Cynwyd, PA 19004-1900

cward@entercom.com

Nancy A. Ory, Esq.

Lerman Senter PLLC

2001 L Street, NW, Suite 400

Washington, DC 20036

nory@lermansenter.com

Counsel for Entercom Divestiture Trust

Michael Wagner, Esq.*

Audio Division, Media Bureau

Room 2-A523

Federal Communications Commission

Washington, DC 20554

Michael.Wagner@fcc.gov

Stephen Svab, Esq.*

Audio Division, Media Bureau

Room 2-A802

Federal Communications Commission

Washington, DC 20554

Stephen.Svab@fcc.gov



Dennis J. Kelly